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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,045	07/15/2003	Anthony S. Kewitsch	Kewitsch PD 025	8904

7590 06/06/2005

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EXAMINER

RUDE, TIMOTHY L

ART UNIT	PAPER NUMBER
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2883

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/621,045	KEWITSCH, ANTHONY S.	
	Examiner	Art Unit	
	Timothy L. Rude	2883	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2005.
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
 4a) Of the above claim(s) 9-23 is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1 and 2 is/are rejected.
 7) ☒ Claim(s) 3-8 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 15 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I and Species 1 in the reply filed on 25 February 2005 is acknowledged.

Claims 9-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group or Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 25 February 2005.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

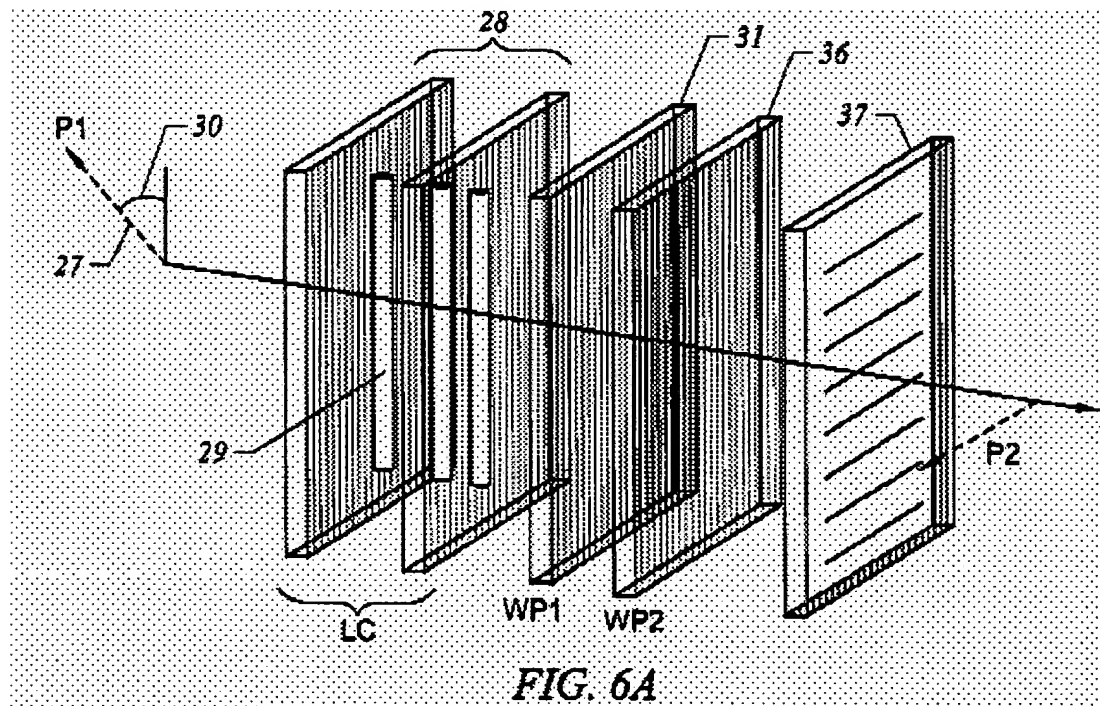
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Kelly et al (Kelly) USPAT 6,614,572 B2.

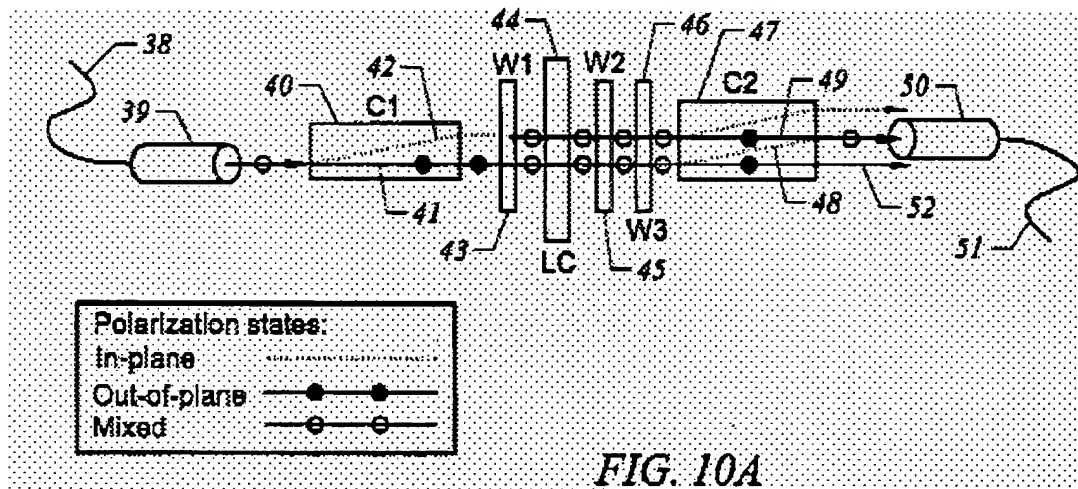
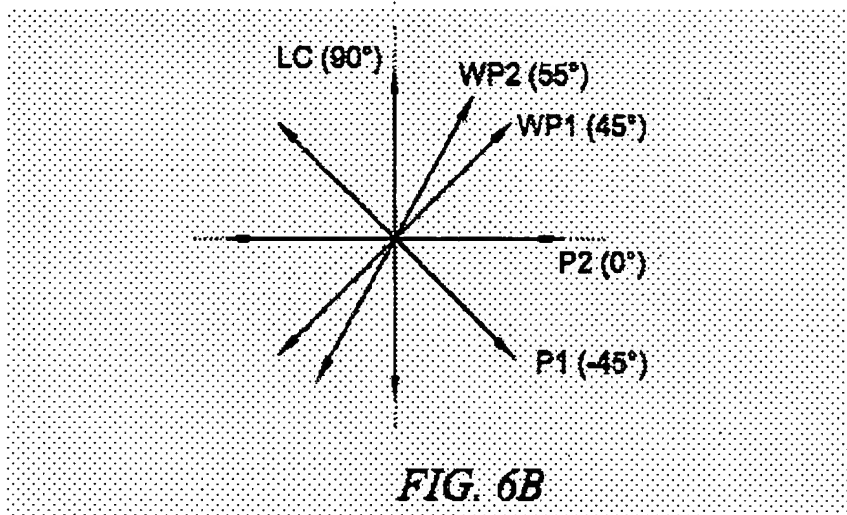
As to claim 1, Kelly discloses [entire patent, especially figures 6A, 6B, and 10A, embodiments explained col. 5, line 1 through col. 10, line 44] an optical communications

device for selectively modifying a multiwavelength optical beam with a given center wavelength and edge wavelengths, while compensating for nonlinearities at the edge wavelengths which affect data reliability, comprising:

an optical modulator, 28, receiving the optical beam and introducing a selectively controllable amount of retardation in the beam; and at least two retardation compensators, 31 and 36, in the path of the beam prior to the optical modulator, the at least two retardation compensators comprising optical wave plates providing integer multiples of retardation selected in relation to the center wavelength and edge wavelengths of the optical beam and a retardation characteristic of the optical modulator [Abstract, and summary of the invention].



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As to claim 2, Kelly discloses the device as set forth in claim 1 above, wherein the optical beam has a selected polarization and the at least two retardation compensators comprise at least one half wave quartz wave plate at the center wavelength and at least one nominally quarter wave plate at the center wavelength [col.

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6, lines 5-30], each having selected optical axis dispositions relative to the polarization axis of the optical beam [per Figure 6B].

Allowable Subject Matter

Claims 3-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

As to claim 3, relevant prior art of record did not disclose, alone or in combination, the optical communications device as claimed wherein the third compensator has a value of less than a tenth wave at the center wavelength to compensate for the residual cell birefringence.

The closest prior art is Kelly who discloses a device as set forth in claim 2 above, wherein the optical modulator further comprises a voltage controlled liquid crystal cell, wherein the nominally quarter wave plate is identically equal to quarter wave at the center wavelength and the retardation compensators further comprise at least a third quartz plate.

However, no reference was found with motivation to combine to comprise the claimed third compensator value of less than a tenth wave.

As to claims 4-8, they are directly or indirectly dependent upon claim 3 with allowable subject matter above.

Conclusion

References cited but not applied are relevant to the instant Application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Rude whose telephone number is (571) 272-2301. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank Font can be reached on (571) 272-2415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



tlr

Timothy L Rude
Examiner
Art Unit 2883



Frank G. Font
Supervisory Patent Examiner
Technology Center 2800